

Is claimant entitled to a work disability on review and modification after her termination of April 4, 2003?

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having reviewed the entire evidentiary file contained herein, the Board finds the Award of the Administrative Law Judge should be affirmed.

The Award sets out findings of fact and conclusions of law in some detail and it is not necessary to repeat those herein. The Board adopts those findings and conclusions as its own.

Claimant originally suffered accidental injury on June 22, 1998, when she was injured by a resident at respondent's long-term care facility. Claimant underwent back surgery and was returned to work at an accommodated position as a CMA (certified medication aide). Claimant's responsibilities included feeding the patients, passing out medications and caring for the books. While claimant, as a CMA, would normally assist the certified nurse's assistants (CNAs) in dealing with the patients, claimant's restrictions prohibited her from performing the CNA duties. She was, therefore, limited in her CMA duties to passing out medications and documenting the books.

According to the testimony of Londa Tipton, the director of nursing (DON), on April 1, 2003, claimant went to her supervisor and advised that she was being "bugged" by one of the residents. Claimant did not advise any of her supervisors with whom she had contact that day that this resident was, in any way, combative. Claimant merely advised them that the resident was "bugging her". Claimant was asked if the resident had a PRN, meaning was there an order allowing that resident to be medicated if she was causing difficulties, and claimant acknowledged that a PRN order was in existence. She was then advised to provide the appropriate medication to the resident and return to her duties, passing out medication.

Londa Tipton asked claimant specifically about the PRN and advised her to provide the appropriate medication. When Ms. Tipton also inquired as to whether claimant was able to return to her CMA duties, claimant responded that she was. Claimant was also advised to document the situation and continue providing medication to the other residents.

Claimant proceeded to a linen closet, where she was able to pass out the medications without interference from the bothersome resident. Claimant handed out medication at 9:00, 10:00 and 11:00 in the morning of April 1. However, for reasons known only to claimant, she failed to provide any medication to the residents at noon and 1:00 p.m. This resulted in six or seven residents not being properly medicated. The error by claimant was not discovered until claimant had left respondent's facility after her shift concluded at 2:00 p.m. The error, discovered by another CMA, was reported to respondent and an investigation ensued, ultimately resulting in claimant's termination

several days later. When claimant was asked why she failed to provide the appropriate medication, claimant's only excuse was that she had forgotten.

Claimant was treated by her authorized psychologist, Charles W. Alexander, Ph.D., the next day, on April 2, 2003. At that time, she advised Dr. Alexander that she had been injured by this resident, falling against a wall and scraping her arm. Dr. Alexander, who had been treating claimant for psychological problems since 2000, felt that claimant's ongoing activities with respondent were a stressor affecting her preexisting psychological condition. He felt claimant's involvement with the Alzheimer's unit was stressful, creating concentration problems. There was also an indication that claimant had been diagnosed with reflex sympathetic dystrophy (RSD) by Pedro A. Murati, M.D. Dr. Alexander, not being a medical doctor, was unable to confirm that diagnosis, but did acknowledge that RSD can occur as a result of stress. Dr. Alexander opined claimant was not able to perform the duties of a CMA, although she had done so for several years after the original 1998 accident. When asked about claimant, Dr. Alexander acknowledged she had a prior personality disorder and had attempted suicide before her injury suffered with respondent. He agreed this preexisting personality disorder still existed in claimant, although he testified that claimant's involvement as a CMA with respondent was aggravating that condition. Dr. Alexander had originally performed an MMPI-2 on claimant when claimant was first referred to him, but provided no additional testing after that time. Dr. Alexander, when asked, was not aware of what restrictions claimant was working under with respondent, nor was he clear regarding claimant's job duties.

Claimant was also examined on two occasions at respondent's request by Mitchel A. Woltersdorf, Ph.D., a neuropsychologist. The first examination occurred on October 9, 2001, at which time Dr. Woltersdorf provided claimant with two tests, the MCMI-III and the MMPI-2. He testified that the MCMI-III was considered a validity indices and checked for chronic personality problems. The MMPI is utilized to discern a patient's ongoing psychological problems and whether those problems were legitimate or were, in some way, being exaggerated or faked by a patient. In claimant's instance, the original MMPI in 2001 indicated an FBS of 20, which the doctor considered borderline, although still a legitimate result. However, in 2003, the FBS rating was 24, which the doctor considered to be very high, indicating that claimant was actively malingering and exaggerating her condition. Dr. Woltersdorf felt that claimant's emotional problems, which had been temporarily aggravated by the 1998 accident, had been helped by Dr. Alexander and his treatment to the point where the only remaining condition was claimant's chronic personality pattern, which preceded the accident. Claimant had a history of family and marital abuse and had a preexisting suicide attempt recorded in 1992. It is also noted claimant attempted suicide after her 1998 injury.

While Dr. Woltersdorf felt that Dr. Alexander's treatment for claimant was originally providing a benefit, he concluded that claimant's psychological condition was actually being worsened with the ongoing treatment actually causing claimant harm. Claimant had no

current psychiatric diagnosis as it relates to her injuries at work. He opined that claimant's ongoing condition was as a result of the preexisting psychological components.

The ALJ, in reviewing the evidence, found that claimant had failed to prove that she suffered a permanent aggravation of her preexisting condition as a result of the termination, but instead continued with her "premorbid", i.e., pre-1998 level, of psychological functioning. He determined that claimant's ongoing treatment no longer involved the aggravation occasioned by the 1998 injury, but instead dealt with the preexisting problems. The Board concurs in that finding. Claimant's apparent misrepresentation to Dr. Alexander about her number of patient assaults occurring at work and about the incident of April 1, 2003, calls into question Dr. Alexander's opinions regarding the cause of claimant's ongoing condition. The medical records of Dr. Alexander disclosed as many as twenty incidents involving patient contact by claimant which were not reported to respondent.

The Board agrees with the ALJ's determination that claimant's ongoing need for psychological treatment is related to her preexisting psychological condition and not the injury of June 22, 1998. Additionally, the ALJ determined that claimant had not acted in good faith in failing to dispense the medications on April 1, 2003, and also in her failure to appropriately document the activities of the resident on that date. Those omissions by claimant resulted in her termination of employment and are not related to claimant's June 22, 1998 injury.

The Board, therefore, finds that the determination by the ALJ that claimant is entitled to no additional compensation beyond that already awarded in the September 27, 2002 original Award should be affirmed.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Review and Modification Award of Administrative Law Judge Bruce E. Moore dated March 8, 2004, should be, and is hereby, affirmed.

IT IS SO ORDERED.

Dated this ____ day of October 2004.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: James S. Oswalt, Attorney for Claimant
Stephen J. Jones, Attorney for Respondent and its Insurance Carrier
Bruce E. Moore, Administrative Law Judge
Paula S. Greathouse, Workers Compensation Director